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87-740

Supreme Court, U.S.
FILED
OCT 30 1987
JOSEPH F. SPANIOL, JR.
CLERK

October Term, 1987

JAMES BANOS
Petitioner,

vs.

STATE OF IOWA,
Respondent.

ON WRIT OF CERTIORARI TO
THE SUPREME COURT OF IOWA

Petition for Writ of Certiorari

James Banos
N3975 North US-2
Iron Mountain, Michigan 49801
(906) 774-9491

October 29, 1987

QUESTION PRESENTED FOR REVIEW

1.) Did the Supreme Court of Iowa, through an alleged procedural error by Pro Se Petitioner, deny him access to process for out-of-state witnesses that could provide material and relevent testimony for his defense in a pending criminal trial thereby violating Petitioner's Fifth and Sixth Amendment rights to due process and compulsory process for obtaining witnesses in his favor?

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OPINION BELOW

The Supreme Court of Iowa entered its order dismissing petitioner's appeal on April 21, 1987. A copy of the order is attached as Appendix A.

The Court denied petitioner's motion for reconsideration on August 10, 1987. A copy of the order is attached as Appendix B.

JURISDICTION

On April 21, 1987 the Supreme Court of Iowa by a single justice, under Iowa Code 814.6(1), dismissed petitioner's appeal. (App. A). The jurisdiction of this Court is invoked under Title 28, United States Code, Section 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment V:

> Nor shall any person....be deprived of life, liberty, or property, without due process of law....

United States Constitution, Amendment VI:

> In all criminal prosecution...to have compulsory process for obtaining witness in his favor.....

United States Constitution, Amendment XIV:

> ....Nor shall any state deprive...equal protection of the laws.

The petitioner, JAMES BANOS, in his own person, respectfully prays that a writ of certiorari issue to review the judgment of the Supreme Court of Iowa entered on April 21, 1987.

STATEMENT OF THE CASE

On or about July 11, 1986, petitioner, in his own person, filed a "motion to reopen the record and request of the Court to issue letters rogatory to Dickinson County Circuit Court, Iron Mountain, Michigan 49801" to procure process on out-of-state witnesses which petitioner became knowlegeable of at the June 26, 1986 hearing held as a result of petitioner's motion to suppress. At said hearing Major Wayne Petersen of the Iowa State Patrol testified that he had spoken with someone at the Dickinson County sheriff's department in Iron Mountain, Michigan, where petitioner resides.

Petitioner then presented himself before undersheriff Peter Schlitt at the

Dickinson County sheriff's department and asked him if he had talked with Major Petersen. Mr. Schlitt admitted he had spoken to someone at the Iowa public safety department on June 6, 1985, the day of petitioner's arrest, but Mr. Schlitt couldn't recall the person's name nor the time of the call. Petitioner then requested the sheriff department's telephone records which Mr. Schlitt refused to produce. Petitioner filed a formal Michigan F.O.I.A. request on July 9, 1986 and was again refused at which time petitioner filed a lawsuit and was awarded the information on October 7, 1986. The telephone records indicated several calls to the Iowa department of public safety and to the Warren County sheriff's department on June 6, 1985, and others.

Petitioner believes and therefore alleges that the reason for and content of these conversations caused petitioner to be treated in Iowa in an unreasonable and

and special handling manner, including his arrest, impoundment of his camper-office, and investigative search - masked as a routine inventory - where his personal effects, including papers, audio tapes, keys, billfold contents, personal notepad, contents of sealed containers were duplicated and copied, and film stolen from his camera and developed, and more. These statements are verified by sworn testimony from petitioner's suppression hearings.

Major Petersen's testimony on June 26, 1986 revealed his department's connection with these sought-after witnesses from Michigan. Petitioner's personal interview with undersheriff Schlitt and the telephone records from the sheriff's department confirmed Major Petersen's testimony. These revelations make it highly probable that these sought witnesses would have relevent and material testimony that would be exculpatory in defense of petitioner's motion to

suppress in his pending criminal case #9089 in Warren County, Iowa, where the State is and has been maintaining in their indictment and other court filings that the impoundment, search, seizure (supra) were routine actions under Iowa statutes and Administrative Procedure Act. These sought witness could testify or support petitioner's defense that said acts (supra) were not routine or lawful and did in fact violate petitioner's constitutional rights under the First, Second, Fourth, Fifth, Sixth and Fourteenth Amendments.

When petitioner became aware of undersheriff Schlitt's involvement, and other local involvement, he presented himself to the Dickinson County clerk requesting a subpoena for deposition of these witnesses. The clerk referred petitioner to the circuit court judge as the clerk said she could not issue the subpoena without the signature and authorization of the judge. Petitioner, re-

presenting himself, asked the judge to authorize the three subpoenas requested. Judge Francis Brouillette of the circuit court declined, saying in effect that he had to be requested to do so by the Warren County district court in Iowa.

Shortly thereafter, July 11, 1986, petitioner sent in his motion to reopen the record. This motion was denied by the district court on July 14, 1986 for lack of jurisdiction (App. C.).

On July 25, 1986 petitioner filed a motion for reconsideration which was overruled by the district court on August 11, 1986. (Appendix D).

Petitioner then appealed to the Supreme Court of Iowa on September 3, 1986, seeking proper jurisdiction to procure the needed witnesses.

Kevin Parker, assistant Warren County attorney, entered his motion to dismiss on January 21, 1987 under Rule 23 of the Iowa

Rules of Appellate Procedure arguing that there was no final judgment rendered by the trial court. Petitioner argued in his amended resistance of April 11, 1987 that he would be forced to go to jeopardy without the benefit of vital witnesses if petitioner's appeal was not granted and the District Court's ruling is a final order in this regard.

On April 21, 1987 the Supreme Court of Iowa granted the State's motion to dismiss for reasons different and inaccurate then asked for, stating in effect that petitioner had made a procedural error and appealed his motion for reconsideration (which he had not done). Petitioner brought this apparent misunderstanding to the Court's attention in his reconsideration motion filed April 25, 1987, pointing out that he was appealing the District Court's original denial of his motion to reopen the record and issue letters rogatory and that the appeal was filed timely

and the reason for sustaining Mr. Parker's motion to dismiss was in error.

On August 10, 1987, the Court denied petitioner's motion upholding the April 21, 1987 order of the Court. (App. B).

REASON FOR GRANTING THE WRIT

The petitioner is representing himself and is charged with a criminal misdemeanor violation of Iowa Code 724.4, carrying a weapon in a motor vehicle (two year and/or $5,000 fine and penalty).

Petitioner has diligently had to ferret out witnesses for his defense, working against generally uncooperative law enforcement and prosecutorial agencies. Petitioner has had to use F.O.I.A. requests and other legal process and personal interviews to secure evidence in his defense. In spite of repeated motions and requests for the prosecutor, Kevin Parker, to produce exculpatory evidence as required by law, which by the way

he refused to comply with, petitioner then discovered during Major Petersen's testimony on June 26, 1986 the liason between the Iowa department of public safety and petitioner's local Dickinson County sheriff's department at the time of, or preceding, petitioner's arrest on June 6, 1985. Petitioner then presented himself before the liason person, undersheriff Peter Schlitt of the Dickinson County sheriff's department, and Mr. Schlitt admitted talking to someone from the Iowa public safety department on June 6, 1985. Undersheriff Schlitt refused to say anymore at this interview which took place sometime in July of 1986. Mr. Schlitt appears to be acting in the capacity of informer. Deputy John Deldin of the Dickinson County sheriff's department called petitioner's wife on the day of said arrest and has knowledge relevent to petitioner's defense also.

Petitioner maintains that the Warren County District Court and, subsequently, the

Supreme Court of Iowa have deprived petitioner of substantive due process under the Fifth, Sixth and Fourteenth amendments of the United States Constitution by denying him access to process for witnesses - germane, relevent and material to petitioner's defense.

Petitioner maintains that these constitutional rights have been denied and that the Court was well aware of what petitioner wanted and needed, but they have said, for one reason or another, that petitioner appealed the wrong order and the Court used that as a procedural guise to dismiss petitioner's motion and appeal.

The Fifth amendment guarantees due process of law and the Sixth amendment assures compulsory process for obtaining witness in his favor.

In Kinsella v U.S. (1960)361 US 234, 4 L.Ed., 2d 268, 80 S.Ct. 297,the Court held that "due process had to do with denial of fundamental fairness."

In Wolff v McDonald (1974) 418 US 539, 41 L.Ed., 2d 935, 94 S.Ct. 2963, 71 Ohio Ops 2d 336, held that "Touchstone of due process is protection of individual against arbitrary action of government."

As regards the Sixth and Fourteenth amendments, in Washington v Texas (1967) 338 US 14, 18 L.Ed 2d 1019, the Court held that "Right of accused to have a compulsory process for obtaining witnesses in his favor, guaranteed in federal trials by Sixth Amendment, is so fundamental and essential for fair trial that it is incorporated in due process clause of Fourteenth Amendment, so as to be applicable in state trials."

Also, in Fitzpatrick v Procunier (1985) CA5 Tex, 750 F2d 473, the Court held as regards informers "....when defense is aware of identity of informant or court has ordered disclosure of his identity, prosecutor must make known informant's name and address and make reasonable effort to produce informant

at trial."

The following cases also support petitioner's position that the State violated petitioner's constitutional rights under the Sixth Amendment as held in Paoni v United States (1922 CA3 Pa) 281 F 801, the "Judgment of conviction is unconstitutional where accused is forced to trial without fair opportunity to procure attendance of witnesses"; in Singleton v Lefkowitz (1978, CA2 NY) 583 F2d 618 cert den 440 US 929, 59 L.Ed 2d 486, 99 S.Ct 1266, "Sixth Amendment right to have compulsory process for obtaining witnesses is violated when state arbitrarily denies defendant opportunity to put on stand witness whose testimony would be relevant and material to his defense", and Pettijohn v Hall (1979, Cal Mass) 599 F2d 476, cert den 444 US 946, 62 L.Ed 2d 315, 100 S.Ct 308, "Exclusion of relevant exculpatory evidence infringes upon Sixth Amendment right of accused to present witnesses in his own de-

fense; once such right is implicated, state must offer sufficiently compelling purpose to justify practice complained of."

CONCLUSION

For the foregoing reasons, petitioner, JAMES BANOS, in his own person, respectfully requests that a writ of certiorari issue to review the judgment of the Supreme Court of Iowa.

Respectfully submitted,

James Banos

James Banos, in his own person
N3975 North US-2
Iron Mountain, Michigan 49801

(906) 774-9491

IN THE

SUPREME COURT OF THE UNITED STATES

NO. _____

JAMES BANOS, Petitioner,

vs.

STATE OF IOWA, Respondent.

PROOF OF SERVICE

STATE OF MICHIGAN) ss:
COUNTY OF DICKINSON)

JAMES BANOS, after being duly sworn, deposes and says that pursuant to Rule 28. 5(c) of this Court has this day forwarded 40 copies of the within PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF IOWA to the Supreme Court of the United States by placing said copies in a properly addressed package to:

Clerk of the Supreme Court
of the United States
Supreme Court Building
1 First Street, N.E.
Washington, D.C. 20543

and copies to counsel for Respondents to -wit: Kevin Parker
Assistant Warren County Attorney
Warren County Court House
Indianola, Iowa 50125

by depositing same in the United States Mail, first class, this 29 day of October, 1986.

James Banos

JAMES BANOS, in his own person
N3975 North US-2
Iron Mountain, Michigan 49801
(906) 774-9491

Subscribed and Sworn to before me this 28th day of October, 1987.

Jack A Adams Notary Public

Dickinson County, Michigan
Marquette County Notary acting in Dickinson
My commission expires: Dec. 20, 1989

IN THE SUPREME COURT OF IOWA

No. 86-1371

Warren Criminal No. 9089

O R D E R

STATE OF IOWA,

Plaintiff,

vs.

JAMES BANOS,

Defendant.

The order overruling defendant's motion to reconsider is not a final judgment that may be appealed as a matter of right. See Iowa Code S814.6(1). Plaintiff's motion to dismiss should therefore be sustained. The above-captioned appeal is hereby dismissed.

Dated this 21 day of April, 1987.

/s/

Linda K. Neuman
Justice - Supreme Court
of Iowa

Entered April 21, 1987

Appendix A

IN THE SUPREME COURT OF IOWA

No. 86-1371

Warren County District Court No. CR 9089

O R D E R

STATE OF IOWA,

Plaintiff,

vs.

JAMES BANOS,

Defendant.

This matter comes before the court, Harris, Larson, and Lavorato, JJ., on the defendant's motion for reconsideration of this court's order entered on April 21, 1987.

Defendant's motion to reconsider is treated as a request to review the order of a single justice pursuant to Iowa Rule of Appellate Procedure 22(f). This court's order entered on April 21, 1987, is hereby confirmed as the order of this court.

Dated this 10th day of August, 1987.

THE SUPREME COURT OF IOWA

/s/ Louis A. Lavorato, Justice

Entered on August 10, 1987

Appendix B

IN THE IOWA DISTRICT COURT
FOR WARREN COUNTY

STATE OF IOWA,	)	
Plaintiff,	)	No. 9089
vs.	)	NOTICE OF CALENDAR
JAMES T. BANOS,	)	ENTRY
Defendant	)	

To: John W. Criswell
Marlyn Jensen, Route 2, Osceola, Iowa

You are hereby notified of a Calendar entry in the above entitled case as follows:

Defendant's Motion denied for lack of jurisdiction

JOHN P. CROUCH
DISTRICT ASSOCIATE
JUDGE

Dated this 14 day of July, 1986.

Barbara Traster,
Clerk District Court

The original of the above notice was mailed or delivered to above attorneys and defendant on the 14 day of July, 1986.

Barbara Traster

Appendix C

RULING OR-~~ORDER~~-

CASE NO. 9089 DATE 8-11-86

STATE OF IOWA

vs.

JAMES BANOS,

Defendant

Defendant's Motion to Reconsider is overrulled as to each and every ground urged.

S/ JOHN P. CROUCH
District Associate Judge

Appendix D